No. 83-1619

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

CHEMICAL BANK AND
WASHINGTON PUBLIC POWER SUPPLY SYSTEM,
Petitioners,

v.

GARY ASSON, *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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46 pp

QUESTION PRESENTED

Did the Supreme Court of Idaho, in its decision reaffirming its long and consistently applied construction of the Idaho Constitution, holding that, absent an election, the respondent Idaho Cities lack authority to enter into the Participants Agreements for Washington Public Power Supply System Nuclear Projects 4 and 5, violate the United States Constitution by effecting a taking of or impairment of bondholders' property rights or an impairment of bondholders' contracts?

PARTIES TO THE PROCEEDING

The parties to the proceedings set forth at page i of the Petition for Certiorari correctly set forth the parties in this case. This Brief in Opposition to Petition for Certiorari is offered by the Respondents who were original petitioners before the Supreme Court of Idaho: Gary Asson, LeRae Asson, Ransom H. Brown, Betty Brown, J. R. Simplot Company, Richard H. Bohle, Paula L. Bohle, Blaine Jensen, Lillian D. Jensen, Clarence F. Bellem, Lillian B. Bellem, Magic Valley Foods, Inc., and Cameron Sales, Inc. The remaining respondents excepting for the City of Heyburn, Idaho, and its officials, join in this Brief in Opposition to Petition for Certiorari and the counsel for those municipal parties specifically join in this brief. They are set forth in Appendix B.

A list of the subsidiaries (other than wholly owned) or other affiliates of J. R. Simplot Company called for by Rule 28.1 attached as Appendix D. The other corporate respondents have no affiliates.

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TABLE OF AUTHORITIES

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondents, Petitioners before the Supreme Court of the State of Idaho, respectfully pray that this Court deny this Petition for Writ of Certiorari.

OPINION BELOW

The statement of proceedings below found at page 2 of the Petition for Certiorari is essentially correct.

JURISDICTION

These Respondents respectfully disagree with the statement of jurisdiction contained at page 2 of the Petition for Certiorari for the reason that it incorrectly states a jurisdictional basis. In the jurisdictional statement, and throughout the Petition for Certiorari, Petitioners have sought to frame this matter as if the Idaho municipal

respondents took actions, other than merely participating in the Idaho litigation, which may have interfered with the "constitutional rights of bondholders" purported to be represented by Chemical Bank as Trustee. An examination of the decision of the Idaho Supreme Court which is annexed to the Petition for Certiorari as Appendix A and which is reported at 670 P.2d 839 reveals that the Idaho Court simply construed its constitutional provision as it applied to the facts before it, which facts were presented by stipulation. Moreover, this case was brought below not by the Idaho municipal respondents, but by individual and corporate ratepayers of three of the Idaho municipal respondents who, as private parties, could not have taken in action which could be described as "state action" in a form which might have impaired or interfered with bondholders' constitutional rights. Similarly, Petitioners have asserted in their jurisdictional statement and elsewhere in their Petition that the decision of the Idaho Supreme Court was "the surprising result" which was "coupled with the sweeping breath of the relief granted" in an effort to, by ipse dixit, elevate the Idaho Court's essentially limited ruling on a state constitutional issue to the dignity of a matter which might fall within the certiorari jurisdiction of this Court. As will be explained below, the result of the Idaho Supreme Court was neither surprising nor sweeping and the relief granted was the only relief reasonably foreseeable under the long line of consistently applied Idaho State cases construing its constitution. That consistent application of Idaho constitutional law does not rise to the dignity of an impairment of federal constitutional right. There is no substantial federal issue within the jurisdiction of this Court.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statement contained at page 2 of the Petition for Certiorari is correct.

STATEMENT OF THE CASE

The statement of the case contained in the Petition for Certiorari at pages 3-8 does not accurately reflect the proceedings in the Idaho Supreme Court which are more correctly summarized by that Court in its Opinion. This case does not arise out of a municipal bond default. This case arises out of a petition for writ of prohibition brought by the individual and corporate ratepayer petitioners below who sought relief from a charge for electrical service imposed or threatened to be imposed by Idaho cities for the purpose of discharging obligations of those cities which were violative of Article 8, § 3 (and other provisions) of the Idaho Constitution. Although other litigation respecting the interpretation and effect of those obligations, if any, was then pending before the courts of the State of Washington involving those Idaho municipalities, these ratepayers were not and are not parties to the Washington cases. Moreover, the litigation in the courts of the State of Washington specifically deferred to the Idaho court for a determination of the question of the constitutional authority of the Idaho cities to enter into the participants' agreement obligations. The question of Idaho constitutional authority was, in short, not a part of the Washington litigation. The petitioning parties below were not parties in the Washington courts. The wide range of issues which may be litigated in the Washington courts were also not before the Idaho Supreme Court in this case. This case purported only to decide the single Idaho constitutional issue. Thus, in no way, can this case

be described as "ancillary to the principal litigation" pending in the courts of the state of Washington.

Petitioners' statement of the case goes dramatically far beyond the record presented to the Idaho Supreme Court in this case. That record was presented to the Idaho Supreme Court by way of a "Statement of Stipulated Facts."[1] The actual record before the Idaho Supreme Court is accurately and correctly summarized by the Idaho Supreme Court in its Opinion directing that its alternative writ of prohibitin be made permanent. That record is again briefly summarized here.

Among numerous public power suppliers in the Northwest who are customers of the United States Department of Interior, acting through the Bonneville Power Administration (BPA), are five small Idaho cities, Burley, Heyburn, Rupert, Idaho Falls, and Bonners Ferry (the municipal respondents here). Throughout the time relevant to the decision of the Idaho Supreme Court, and at least since 1963, each of those cities purchased power from the BPA and resold it to customers, including the petitioner ratepayers. By Idaho law, those cities are the only supply of electrical power for those ratepayers and their rates are not regulated by the Idaho Public Utilities Commission but solely by the municipal governments involved.

As the Idaho municipalities and other suppliers of public power in the Northwest entered the 1970's, they were advised by various analysts of future regional power sup-

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[1] The Stipulated Statement without its attachments and without independent additional statements of all parties and objections to those statements is included as Appendix A to this brief. The full record is appended to Respondents' Brief in Opposition to Petitioners' Motion to Defer.

plies that a shortage was coming, an opinion shared throughout Northwest public power circles. In 1973 the BPA alerted its customers, including the Idaho cities, that a "notice of insufficiency" would have to be issued if an adequate plan were not formulated to meet the then projected power needs. In June of 1976, after some deferral, that notice was finally issued to all BPA preference customers, including the five Idaho cities. The BPA's letter to the Idaho cities put them on notice that they risked a loss of firm energy supply and that, beginning in 1983, the BPA might place each such customer on an allocation system. Most Idaho Cities have no generating facilities of their own.

During the early 1970's, the Petitioner, Washington Public Power Supply System ("Supply System"), entered into net billing participation agreements for three nuclear projects to be built by it, Washington Public Power Supply System Projects 1, 2, and 3. Under these net billing arrangements, the BPA effectively stood behind the financing. With the BPA support for the net billing agreements, the authority of participants to enter into these agreements was upheld by the United States District Court for the District of Oregon because the participants did not bear a "dry hole" risk of incompletion. The Idaho cities entered into agreements for each of these projects. No elections were held in the Idaho cities with respect to those projects. But, as the Idaho Supreme Court has pointed out, these net billing arrangements were authorized by Idaho statutory law and they were substantially different from the "dry hole" risk imposed by the participants agreements for Projects 4 and 5.

In 1973 a United States Treasury Department ruling denied tax exempt status for bonds to finance additional thermal electrical generating plants if the projects were

supported by BPA participation in the manner of the first three projects. Thus, in 1975 and 1976 as the decision was made to proceed with the Supply System's Projects 4 and 5, a different form of participation, one not backed by the BPA, was required of the cities if they wished to have a share of electricity to be generated by those projects. The vehicle for providing project generation capacity to participants where the Participants' Agreements entered into in July of 1976 for Supply System Nuclear Projects 4 and 5. Under these Participants' Agreements the Idaho municipalities and 83 other publicly owned utilities in six Northwestern states agreed to purchase "participants' shares" of "project capability" in those projects. For the first time, however, their undertaking to purchase participants' shares was not supported by the obligation of the BPA which had been the significant factor in the net billing arrangements for Projects 1, 2, and 3.

The cities did enter into the Participants' Agreements and provided opinions of counsel stating that the cities had authority to enter into those agreements. The cities did so by duly passed resolutions, but, despite the clear requirements of Article 8, § 3, of the Idaho Constitution, did not undertake to have any election in which their qualified voters could pass on the obligation being so undertaken.[2] The obligations incurred by the cities under

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[2] Although opinions of Idaho municipal counsel were given to the Supply System, Supply System's lead bond counsel in New York specifically excepted the Idaho cities and certain other participants from its opinion on the question of participants' authority. There is no explanation in the record in this case of why bond counsel refused to give an opinion on the authority of the Idaho cities, but we note that action was consistent with the decision of the Idaho Supreme Court sought to be reviewed here.

the Participants' Agreements included the obligation stated in Section 6(d) of those Agreements which has been interpreted by the Petitioners as requiring each participant unconditionally to pay to the Supply System that participant's share of the total annual cost of Projects 4 and 5, including debt service on the bonds issued by the Supply System, whether the Projects are operable or operating and notwithstanding the termination of the Projects prior to completion. This obligation was characterized variously as the "dry hole risk" or in the terms of the Idaho Supreme Court, the "hell or high water" clause. In other words, for purposes of the record here, Section 6(d) of the Participants' Agreements required that the cities unconditionally obligate themselves for their percentage share of the entire cost of financing for projects which might never produce electricity and which might, as in fact did happen, be terminated eighty percent short of completion. It was stiplated that the liability of the cities under the Agreements as so interpreted, exceeded in the annual budget for each and very city, in the year the cities entered into the Agreements, 1976. None of the cities conducted an election nor did they make provisions for an annual tax or sinking fund to pay for the principal amount of the obligations sought to be imposed on them by Section 6(d) of the Participants' Agreements. Each of these factors are elements of the limitation on municipal authority in Article VIII, § 3, of the Idaho Constitution.

Subsequently the Projects overran their projected costs and have been terminated. Unfortunately, that termination was not effected prior to sales of bonds. Under the terms of the Participants' Agreements the cities obtained no title in Projects 4 and 5, either directly or indirectly, legally or beneficially. Obviously, no electric-

ity will be generated from those projects for resale by the cities to the respondent ratepayers.[3]

The removal of the Idaho cities from the total of the 88 participants reduced by less than two percent of the participants' obligations are left untouched by the decision of the Idaho Supreme Court which is sought to be reviewed here. The rural electrification cooperatives who are also Idaho participants among the remaining eighty-three public participants in Projects 4 and 5 are unaffected by this decision. The "step-up" provisions in the Participants' Agreements for Projects 4 and 5 more than adequately responded to the possibility of losing a small percentage of obligated participants in order to insure that the Participant's Agreements obligations would still fund the projects.

The ratepayer respondents (petitioners below) brought an original action for writ of prohibition in the Idaho Supreme Court asking that Court to enforce the plain and consistently applied language of several provisions of the Idaho Constitution which denied these cities authority to enter into obligations of the sort imposed by Section 6(d) of the Participants' Agreements. The Idaho Supreme Court determined that Article 8, § 3 of the Idaho Constitution cleary precluded authority in the Idaho cities in these instances. The Court did not look at the other provisions of the Idaho Constitution. Specifically the Idaho Court held that an election was required to undertake long term obligations and that, in the absence of an election, there was no authority for the obligations and for charging Respondents to discharge those liabilities.

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[3] Of Projects 1, 2, and 3, only 2 is now operating, while 1 and 3 have been mothballed.

That is the entire case now before this Court on this Petition for Certiorari. It is not a case which is ancilliary or in some fashion subordinate to the Washington case. It involves different parties and different issues. The factual issues were specifically limited by the stipulation of the parties presenting a record to the Idaho Supreme Court. It was upon that stipulated record that the Idaho Court based its local law decision. Finally, as will be described below, the holding of the Supreme Court of Idaho was in no fashion "surprising" or "unanticipated." The decision of the Supreme Court of Idaho did not cause the Supply System's bond default. The decision involved too small a percentage of the total Participants' Agreement obligations and turned on the unique but consistently applied provision of Idaho constitutional law not applicable to over 98% of the total Project 4 and 5 participants.

REASONS FOR DENYING THE WRIT

There are basically two reasons urged upon this Court by Petitioners for granting their Petition. The first is that this case involves the "nation's largest municipal bond default." That is simply not the case. This case involves a specific provision of Idaho constitutional law as it has been specifically interpreted and reinterpreted throughout this century by the Idaho Supreme Court. The total impact on Supply System Projects 4 and 5 bonds is, as described above, less than 2%. It is only by a firm tugging on their bootstraps that Petitioners' efforts to make this limited case in Idaho a part of Petitioners' broader litigation in other states that they can seek to make this local law issue rise to the dignity of matters appropriate for this Court's certiorari jurisdiction.

The other reason consistently urged and consistently wrong is that, somehow, the Idaho Supreme Court's decision was "a surprising change in local law" with the fur-

ther implication, supported nowhere in the Petition nor in the record in this case, that the Supreme Court of Idaho manipulated its line of constitutional authority so as to create a detriment to Petitioners which could never have been foreseen. That assertion is not supported by the decision of the Idaho Supreme Court which is set out in Appendix A to the Petition nor in any review of the actual decisions on this issue of Idaho local law. Indeed, as will be described below, there is nothing surprising at all about the Idaho Court's continuing to treat its constitution in a predictable, sensible, and coherent way including that treatment contained in its decision.

1. The Supreme Court Of Idaho's Decision In This Case Did Not Effect A Retroactive Change In The Law.

By ipse dixit Petitioners have repeatedly asserted in their Petition for Certiorari that the Supreme Court of Idaho dramatically amended the Idaho constitutional law on municipal authority and debt limitation so as to serve the Idaho cities' purpose to impair the property rights of bondholders and Supply System. Nothing could be further from accurate. First, the purpose and result of the action below was to relieve ratepayers of an unconstitutional charge. Second, the operative provision of the Idaho Constitution governing the authority of Idaho cities to enter into long term debt obligations of the sort contained in Section 6(d) of the Participants' Agreements for Projects 4 and 5 is contained in Article 8, § 3 of the Idaho Constitution which is set out in its entirety in Appendix C to this Brief.

Article 8, § 3 of the Idaho Constitution declares that no city "shall incur any indebtedness or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without

the assent of two-thirds (2/3) of the qualified electors thereof" nor without creating provision for the collection of an annual tax sufficient to pay the interest on such indeptedness and a sinking fund to discharge the principal of that obligation. It then states "any indebtedness or liability incurred contrary to this provision shall be void. There follows a proviso that permits cities to incur "ordinary and necesary expenses authorized by the general laws of the state. . . ." Thereafter are a series of other exceptions for revenue bond public works projects, each of which are specifically set out. The only such exception relating to electrical facilities is an allowance for obligations incurred to "rehabilitate existing electrical generating facilities." That exception still requires an election in which a majority of qualified electors approves the obligation. No exception is contained in Article 8, § 3 for obligations incurred with the construction of or development of new electrical generation capacity or facilities.

Article 8, § 3 was part of the Idaho constitution as it was originally adopted in 1889, and the operative language which controls this case has remained substantially unchanged since that time.

In 1912 The Idaho Supreme Court was requested to construe this provision liberally to allow cities to incur such an obligation without an election. *Feil* v. *City of Coeur d'Alene*, 23 Idaho 32, 129 P. 643 (1912). In that case the city was purchasing a municipal water system, financing its purchase with revenue bonds, to be repaid out of a fund composed of revenues derived from the operation of the waterworks. It was argued that, because there was no direct tax revenue or general fund obligation contracted by the city, Article 8, § 3 should be held not to apply. The Idaho Supreme Court in *Feil* rejected that argument and held that it would give effect to th plain

language of Idaho's constitutional provision which barred the incurring of "any indeptedness, or liability, in any manner, or for any purpose. . . ." Rejecting "subtleties and refinements of reasoning" the Court held that the incurring of a liability, no matter how the obligation would be repaid, and held against municipal authority.

In 1914 the Idaho court was requested to reexamine *Feil* and refused in *Boise Development Co. Ltd.* v. *Boise City*, 26 Idaho 347, 143 P. 531 (1941). Subsequently the Idaho court was repeatedly offered opportunities to change its construction of the Idaho constitutional limitation on municipal obligations, and in each instance, although it recognized that Idaho's rule was stricter than the majority rule, refused those opportunities. *Miller* v. *City of Buhl*, 48 Idaho 668, 284 P. 843 (1930); *Williams* v. *City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931); *Straughan* v. *City of Coeur d'Alene*, 53 Idaho 494, 24 P.2d 321 (1932).

In subsequent cases the Idaho court has consistently reaffirmed the continued vitality of the *Feil* case. *See, e.g., Village of Moyie Springs* v. *Aurora Manufacturing Co.*, 82 Idaho 337, 353 P.2d 767 (1960); *Hansen* v. *City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968); *Idaho Water Resource Board* v. *Kramer*, 97 Idaho 535, 548 P.2d 35 (1976). In its decision below the Idaho Supreme Court has again reexamined the history and law relating to Article 8, § 3 at length, and confirmed its adherence to its consistent, 70-year-old line of authority in reaching the decision of which Petitioners now complain.

Petitioners also assert, based on the equally unsupported statements of the dissenting justice in the Idaho Supreme Court, that an unexpected retroactive decision was made by the Idaho Supreme Court concerning the proviso relating to ordinary and necessary expenses in

Article 8, § 3. The majority of the Court carefully examined that issue and anlayzed all of its consistently applied prior cases. The dissenting justice relies on but a single authority. An examination of the majority's opinion in the decision of the Idaho Supreme Court reveals that, once again, it was applying a carefully reasoned and long-standing line of authority and that the bald assertion of an unexpected retroactive change in the law is unsupported. In any event, it is difficult to imagine a circumstance in which very large, open-ended, "deep hole" indebtedness incurred for the construction of large nuclear power plants could be stretched to fall within an ordinary meaning of "ordinary" or "necessary" expenses for these five small cities. Moreover, the proviso specifically states that those "ordinary and necessary expenses" must be provided for in the general laws of the State of Idaho if the exception is to apply. There is no Idaho statutory law authorizing Idaho cities to incur liability (1) without election, (2) of large proportion, or (3) for the construction of plants in which they have no legal or beneficial title. In short, as the Idaho Supreme Court correctly interpreted its local law, the "ordinary and necessary expense" proviso is absolutely inapplicable to this case.

2. No Federal Constitutional Right Or Immunity Has Been Impaired By The Decision Of The Idaho Supreme Court.

Petitioners, at pages 9-13 of the Petition for Certiorari assert on behalf of bondholders a federal constitutional protection for their expectation that the Participants' Agreements of the five small Idaho municipalities would be enforced in violation of the Idaho Constitution. They reach this conclusion by combining the Fifth and Fourteenth Amendments to the United States Constitution with Article I, Secton 10, Clause 1, the Contract Clause of

the Constitution. Unfortunately, they cite no authority for the existence of such an overwhelming federal constitutional right.

There are essentially three lines of authority relied upon by Petitioners for this proposition. The first is general authority under the prohibition on impairment of contract found in Article I, Section 10, Clause 1 of the United States Constitution. The second is instances where the courts of the states have manipulated their interpretive law so as to change that law abruptly and unexpectedly to impede reasonably created expectations based upon prior decisions. Finally, they rely upon general propositions announced as a part of more particular holdings of this Court in elaborating upon general principles supporting specific rulings.

The law relating to the prohibition on impairment of contract is well established and clearly does not apply in this case The contracts clause does not apply to the development of the law through judicial pronouncement but only applies to legislation (including constitutional enactment) enacted by a state subsequent to the creation of contract. *E.g.*, *Barrows* v. *Jackson*, 346 U.S. 249 (1953); *Tidal Oil Co.* v. *Flanagan*, 263 U.S. 444 (1924). This line of authority is, in turn, based upon two important policy determinations of this Court. The first of these is that the courts of the several states must be allowed to develop their law through the ordinary process of case-by-case reasoned elaboration of principle decision. In other words, the ability of the courts in the several states of our federal system to continue to interpret and develop the local law must be respected and preserved. *E.g.*, *Hawks* v. *Hamill*, 288 U.S. 56 (1933). The second of these policy considerations is that this Court will defer to the local law determinations of the several states concerning what that

law is and has been. *E.g.*, *Hawks* v. *Hamill*, *supra*; *Long Sault Development Co.* v. *Call*, 242 U.S. 272 (1916); *Zane* v. *Hamilton County*, 189 U.S. 370 (1903).

In the present case the constitutional limitation on municipal authority raised by the ratepayer respondents below and determined by the Idaho Supreme Court was created in the Nineteenth Century and has been consistently interpreted and applied by the Idaho courts for a period in excess of 70 years. There is no legislative or constitutional enactment which has been interposed between the date of the contracts in this case in 1976 and the date of the Court's decisin in 1983. Under the circumstances of this case there can be no unconstitutional impairment of contract rights. *Hawks* v. *Hamill*, *supra*; *Long Sault Development Co.* v. *Call*, *supra*; *Ennis Waterworks* v. *City of Ennis*, 233 U.S. 652 (1914); *Zane* v. *Hamilton*, *supra*.

The second line of authority relied upon by Petitioners is found in those cases which hold that courts may not manipulate in an abrupt and unforeseeable fashion changes in their interpretation of the local law so as to effect deprivation of property. *See*, *e.g.*, *Hughes* v. *State of Washington*, 389 U.S. 290 (1967). This Court has been reluctant to so hold (absent impingements on fundamental liberties) for many of the same reasons that this Court does not apply the contracts clause to judicial action. *PruneYard Shopping Center* v. *Robins*, 447 U.S. 74, 85-87 (1980); *Demorest* v. *City Bank Farmers Trust Co.*, 321 U.S. 36, 42, 49 (1944); *Broad River Power Co.* v. *South Carolina*, 281 U.S. 537, 540 (1930). Essentially, this court has refused to interject itself into questions of the interpretation of local law or the reconciliation of the cases within a state or among the several states interpreting state law, even though the petitioners in those several

instances have asserted that the state courts had changed the law so as to upset the reasonable anticipation upon which they had acted. The result has not differed whether the claimed constitutional impairment was raised under the contracts clause or under the Fifth and Fourteenth amendments.

The third line of authority relied upon by Petitioners is best exemplified by *Kaiser Aetna* v. *United States*, 444 U.S. 164 (1979) and *Armstrong* v. *United States*, 364 U.S. 40 (1960). Both of these cases were decisions relating to the "takings" clause of the Fifth Amendment of the United States Constitution. Both of them involve very specific actions of the United States Government which directly interfered with known, traditional property rights established under local law. The *Kaiser Aetna* case also involved inconsistent federal administrative actions. In the present case no such property right has been raised in the Petition for Certiorari. Similarly, no state action was taken by either these ratepayers or the Idaho Supreme Court beyond the simple enforcement of the well-known and long-established Idaho Constitutional limitation on municipal debt authority. Certainly no prior action was taken by these ratepayers, the Idaho courts, or the state government of the State of Idaho establishing a specific property right in either the Petitioners or the bondholders they presume to represent. There having been no such prior positive action, there was no reasonable expectancy which a subsequent action could have upset. The general language contained in those cases is particularly unilluminating concerning the existence of a protectable federal constitutional right.

3. There Is No Substantial Federal Question Raised By These Petitioners.

As rule 17.1 of the Rules of this Court makes clear, this Court's review on writ of certiorari is not a matter of right, but is discretionary, and will be granted "only when there are special and important reasons therefore." We have gone to greater than ordinary length to indicate what the actual record in this case is and how that record and the decision of the Idaho court fits within established principles of federal constitutional application. Our purpose was to show that there is no substantial federal question of great public interest at stake here.

This case did not and does not involve the largest municipal bond default in our nation's history. It involves the Idaho State constitutional authority governing Idaho cities' incurring debt or liabilities without an election or the other safeguards required by the Idaho Constitution. It involves less than two percent of the total obligations for the Supply System's Nuclear Projects 4 and 5. It does not involve state legislative or constitutional action interposed to destroy contract or established property rights between 1976 and 1983. It does not involve a retroactive, surprising, unprecedented change in the law of Idaho. It involves the Idaho Supreme Court's continued adherence to its 70-year-old interpretation of the plain language of its own local constitution, a constitution and an interpretation which it has repeatedly recognized to be unique among similar provisions of other states and which it has also refused to change. It does not involve municipal action depriving any party of property or a contract right, but instead is a traditional action brought by affected parties, here ratepayers of the five small Idaho cities, seeking redress in the Idaho state courts for an Idaho constitutional violation. It is not a case involving

the wide-ranging editorial description of the entire Washington Public Power Supply System debacle (which we presume must have been elaborated in the other litigation involving Petitioners), but is, instead, one based solely upon a limited stipulated record dealing with the specific Idaho local law issues and parties before the Idaho court.

Petitioners have characterized the constitutional issues as a derivative from three separate Constitutional provisions in order to obscure the fact that there is, in fact, no recognized federal constitutional issue presented in this case. They have done so in order that they might have one further court pass upon the local law question which they failed to win in the Idaho Supreme Court, the court having responsibility for Idaho constitutional interpretation. Similarly, Petitioners have inaccurately characterized the decision of the Idaho Supreme Court as surprising, unanticipated, and as upsetting reasonable expectations when an examination of the local law repeals, as the Idaho Supreme Court states, the contrary is the fact.

This Court does not sit to correct errors of the state courts in the interpretation of state law. *Mangum Import Co.* v. *Coty*, 262 U.S. 159, 163 (1923); *Sauer* v. *City of New York*, 206 U.S. 536 (1907). Nor is it the function of the certiorari jurisdiction of this Court to retry or reinterpret the facts presented below. *Graver Tank & Manufacturing Company* v. *Linde Air Products Company*, 336 U.S. 271 (1949). Instead, this Court has reserved its discretionary jurisdiction for issues which are of great public importance, "beyond academic or episodic" interests, and in which the constitutional issues have been clearly drawn in the courts below. *Estelle* v. *Gamble*, 429 U.S. 97, 115 (1977) (Stevens, J., dissenting); *Rice* v. *Sioux City Cemetery*, 349 U.S. 70 (1954).

This case is episodic, it is of limited scope, and it turns completely on an interpretation of local, Idaho constitutional law. It is the least appropriate of cases for this Court's review on a petition for certiorari.

CONCLUSION

For all of the reasons set forth hereinabove the Petition for Certiorari of Chemical Bank and the Washington Public Power Supply System should be denied.

RESPECTFULLY SUMBITTED this ____ day of June, 1984.

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APPENDIX

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court No. 14719
Supreme Court No. 14809

GARY ASSON and LERAE ASSON,
husband and wife, *et al.*,
Petitioners,

v.

CITY OF BURLEY, *et al.*,
The INTERSTATE COMMERCE COMMISSION,
Respondents.

and

WASHINGTON PUBLIC POWER SUPPLY SYSTEM; *et al.*,
Intervenors.

RICHARD H. BOHLE and PAULA BOHLE,
husband and wife, *et al.*,
Petitioners,

v.

CITY OF RUPERT, *et al.*,
Respondents.

and

WASHINGTON PUBLIC POWER SUPPLY SYSTEM, *et al.*,
Intervenors.

STATEMENT OF STIPULATED FACTS

The parties stipulate to the truth of the statements set forth below for the purposes of this litigation only. The parties do not necessarily concur that the statements are relevant to these consolidated cases, and all objections as to relevancy are reserved.

1. This action concerns the authority under Idaho law of the five Idaho cities referred to herein to enter into Participants' Agreements with respect to two electric generating projects (Projects 4 and 5) of the Washington Public Power Supply System ("Supply System").

THE PARTIES

2. Chemical Bank, a New York corporation, is trustee for the holders of bonds issued by the Washington Public Power Supply System (the "Supply System") to finance the construction of Projects 4 and 5. Chemical was appointed trustee in February of 1977 pursuant to Bond Resolution No. 890 of the Board of Directors of the Supply System (a copy of the Resolution is attached to Chemical Bank's Petition for Leave to Intervene, dated December 10, 1982).

3. The bondholders whom Chemical Bank represents include numerous individuals and institutions.

4. The Supply System is a municipal corporation and joint operating agency organized under the laws of the State of Washington to finance, construct, own and operate electrical generating facilities. It was established in 1957 and is composed of 19 public utility districts in the State of Washington and the cities of Seattle, Tacoma, Richland and Ellensburg, Washington.

5. The cities of Burley, Heyburn, Rupert, Bonners Ferry and Idaho Falls, Idaho ("the Cities"), are municipal corporations organized under the laws of Idaho. Each city is governed by a Mayor and City Council.

6. J. R. Simplot Company is a Nevada corporation that owns and oprates a potato-processing facility outside the city limits of the City of Heyburn and a waste treatment facility within the city limits of the City of Burley. J. R. Simplot Company is the single largest user of electricity of Heyburn and is one of the largest users of electricity in Burley. Magic Valley Foods, Inc., is an Idaho corporation having its principal place of business at Rupert. It purchases electrical energy from Rupert to operate a potato processing plant. Cameron Sales, Inc. is an Idaho corporation having its principal place of business in Rupert and purchases electrical energy from Rupert in the operation of its farm implement dealership.

7. The following individuals and corporations purchase electric power from the cities of Burley, Heyburn and Rupert: Gary Asson and LeRae Asson, from Burley; Ransom H. Brown and Betty Brown, from Heyburn; Richard H. Bohlle, Paula L. Bohle, Blaine Jensen, Lillian D. Jensen, Charles B. Park, Billy F. Park, Clarence F. Bellem, Lillian B. Bellem, Magic Valley Foods, Inc., and Cameron Sales, Inc. from Rupert.

8. Petitioners in these consolidated cases include qualified electors of and purchasers of electrical energy delivered by the cities of Burley, Rupert and Heyburn. Some Petitioners are purchasers of electrical energy delivered by these cities, but are not citizens or qualified electors of their respective city.

THE CITIES' ELECTRICAL DISTRIBUTION SYSTEMS

9. Each of the Cities owns and operates an electrical distribution system that supplies electrical power to that city's inhabitants and nearby areas.

10. The electrical distribution systems of Burley, Rupert and Heyburn do not include facilities for the generation of electrical power and, consequently, those cities purchase power from another suppliler to meet the power needs of their respective electric customers. Idaho Falls and Bonners Ferry

own generating facilities which provide part of their electric supplies, but these cities purchase power from another supplier in order to meet the needs of their electric customers.

11. Petitioners' only supplier of electrical energy is their respective city if the city is willing and able to provide adequate electric service because of the Electrical Supplier Stablization Act, Idaho Code § 61-332 *et seq.*

12. For amny years, and at least since August 1963, the Cities have purchased electrical energy from the United State Department of Interior acting through the Bonneville Poweer Administration (hereinafter "BPA"). Over 100 public utilities in the Northwest—known as BPA preference customers—have similarly purchased electricity from the BPA.

13. BPA was created in 1937 under the Bonneville Project Act to market power to be produced by the Bonneville Dam located on the Columbia River. By 1976, BPA's marketing authority encompassed 29 other hydroelectric facilities in the Columbia Basin. BPA has not constructed any of the hydroelectric facilities from which it markets electric energy.

14. Through the 1950s the Pacific Northwest's electric power was chiefly supplied by hydropower, most of which was marketed by BPA.

15. Under federal law, public bodies, such as the Cities, were entitled to certain preferential treatment in the purchase of electric power from BPA, 16 U.S.C.A. § 832d(a).

16. Electric power has been supplied to the Cities pursuant to the terms of a "Power Sales Contract" between the respective Cities and the United States, acting through the BPA, at least since 1963. Representative copies of the Power Sales Contract of the Cities are on file with the pleadings in the consolidated cases.

17. As a result of forecasts made in the late 1950's and early 1960's, a growing concern developed in the Pacific Northwest that the region's hydroelectric resources could not keep pace with expected demands for power.

18. In 1966, continuing forecasts of electrical energy demand exceeding the capability of the region's hydro-power system caused many public and private utilities and the BPA to form an ad hoc group known as the Joint Power Planning Council ("JPPC"). The purpose of the JPPC was to study the region's future needs and to prepare to meet them. Idaho Falls and possibly other Idaho cities were members of the JPPC. The JPPC determined that the future would require the development of thermal generating facilities to meet anticipated demands because hydro resources would be inadequate.

19. The result of the JPPC's work was the "Hydro-Thermal Power Program," a plan calling for the construction of thermal power plants of the benefit of the Pacific Northwest's public owned utilities. The Hydro-Thermal Power Program was approved by Congress in the Public Appropriations Works Acts of 1970.

20. The Public Powr Council ("PPC") was formed in 1968. The Cities have paid dues to the PPC since at least 1972.

21. Between 1968-1976, representatives of Idaho Falls and possibly other Idaho cities served on the PPC's Executive Committee, as well as on other important committees.

22. Between 1968 and 1976, after investigating reasonable methods of constructing additional power plants and obtaining more power, the PPC requested the Supply System to arrange for the financing, design and construction of five nuclear plants in the Hydro-Thermal Program. Those plants came to be known as Washington Nuclear Projects 1, 2, 3, 4 and 5.

23. The view that the egion's hydro-power resources would be insufficient in the future was shared by the following, among others, during the period 1968-1976:

(a) By the Cities themselves and other public owned utilities, as reflected in all of the agreements signed by the Cities with reference to Projects 1, 2, 3, 4 and 5.

(b) By the Pacific Northwest Utilities Conference Committee ("PNUCC"). Formed in 1946, the PNUCC was a

region-wide planning organization, in which 130 public and private Northwest utilities were represented. Each year it published the *West Group Forecast*, a compilation of load growth forecasts from each of the utilities in the region. The *West Group Forecast* was used over the years since the establishment of the PNUCC in 1946. Those forecasts predicted power shortages by the early to mid-1980's.

(c) By the United States Government, which (through the Secretary of the Interior) advised the Administrator of the BPA in March 1973 that unless a plan were developed in the Pacific Northwest to meet the region's projected loads, a "notice of insufficiency" would have to be issued by the BPA to its preference customers informing them that by the early 1980's their power needs might not be completely met by the BPA. That year, the BPA alerted its customers that a notice of insufficiency would have to be issued if an adequate plan were not formulated to meet power needs. In June of 1976, that notice was finally issued to all the BPA preference customers, including the five cities. The BPA's letter to the Cities stated, in part:

> "Bonneville has completed an analysis of the resources it estimates will be available for disposition and its requirements and commitments to supply firm energy in the year July 1, 1983, to June 30, 1984. As a result of this analysis, Bonneville has determined that the firm energy resources available to it will be insufficient in that year to supply in full the City's firm energy requirements, the firm energy requirements of other preference customers, and Bonneville's obligations to deliver firm energy to its other customers.
>
> Therefore, in accordance with the provisions of the Power Sales Contract, I hereby give notice, effective at 2400 hours on June 30, 1976, that in the year beginning July 1, 1983, and in each year thereafter during the term of the Power Sales Contract, Bonneville's obligation to supply firm energy to the City will be limited to an allocation, the amount of which will be computed according to the terms of Section 22 of the General Contract Provisions."

(d) By Idaho's legislature, which in 1975 passed mandatory allocation legislation relating to electrical energy and natural gas. 1975 Idaho Session Laws, Chapter 238.

THE SUPPLY SYSTEM PROJECTS

24. In January 1971, January 1973 and September 1973, the Cities, together with other Pacific Northwest utilities, entered into agreements with the Supply System whereby the utilities purchased and the Supply System sold participant shares of "project capability" from Projects 1, 2 and 3, which the Supply System contracted to use its best efforts to finance and construct. A sample of the agreements that were executed with respect to those three projects is attached as Exhibit 6 to the Supply System's Brief in Opposition to Petition for Writ of Prohibition (dated February 14, 1983).

25. A financing method known as "net billing" was devised to provide financial backing by the BPA for the construction program recommnded in the Hydro-Thermal Power Program. Under net billing, the Supply System, a Washington public entity which is authorized to issue municipal bonds, would construct the power plants. The Supply System would sell, at cost, shares of the power plants generating capability to BPA's customers, such as the Cities, who would assign to BPA the capability they purchased from the Supply System. BPA would "net bill" the participants by crediting their accounts (i.e., the accounts they developed by purchasing power from BPA) with the amount they paid to acquire the new plants generating capability. Under this method, then, the capability of a power project was purchased by BPA from each of the project participants which have in turn purchasd such capability in shares from the Supply System. Each project participant continues to pay the Supply System its share of the costs of the project, and BPA gives each participant a credit in the amount of such payment on the BPA bill to the participant for the power sold to such participant. The United States District Court for the District of Oregon in Case 82-1387-RE adjudicated the net billing agreement and concluded the participants

had authority to execute the agreement because the participants did not bear the "dry hole" risk.

26. With respect to projects 1, 2 and 3 each city entered into its agreement after passage by its city council of a resolution authorizing execution of the agreement. No elections were held with respect to any of the projects. Each of the utilities involved in Projects 1, 2 and 3, including the Cities, provided an opinion letter from its own counsel in a form provided by the Supply Sysrem that stated it had authority to enter into each of its agreements with respect to those projects, prior to doing so.

27. In 1973 a Treasury Department ruling denied tax exempt status for bonds to finance additional thermal plants from which BPA would receive more than 25% of the energy.

28. Starting in December, 1973, the PPC considered the possibility of utilizing the Supply System to finance, design and construct two additional plants. For the next two and one-half years, the PPC and various utilities, the BPA, and the Supply System discussed agreements whereby the utilities would contract for the participants' shares of "project capability" of Projects 4 and 5.

29. In 1975, BPA delayed the issuance of the Notice of Insufficiency for one year, during which time 93 of the 110 preference customers signed an Option Agreement to participate in Projects 4 and 5.

30. In deciding to participate in Projects 4 and 5, the utiities considered the region's forecasts of energy shortages and the Projects' low cost as projected by the Supply System in comparison to alternatives. The Supply System was organized under an enabling law which some financing experts believed offered the best regional vehicle for financing the projects at the lowest cost and marketing the power from them. Projects 4 and 5 were to be twins of Projects 1 and 3 and to be located at the same sites, to take advantage of anticipated substantial savings in shared facility costs, engineering, and economies of scale.

31. In July of 1976, when the Participants' Agreements were entered into, each City submitted to the Supply System an opinion letter as described above. True copies of each of these letters are attached hereto as Exhibits A1-A5. This opinion letter was required of all prospective project participants by the Supply System as a condition to the execution of the Participants' Agreement. The Cities had submitted similar opinion letters in July of 1975, relating to the Option and Services Agreement with the Supply System to obtain an option to purchase shares of project capability in what would become Projects 4 and 5.

32. At a regular open city council meeting, each of the Cities unanimously decided to enter into the Participants' Agreement and passed a resolution authorizing its mayor to execute its Participants' Agreement. Attached as Exhibit B is a sample resolution.

33. Effective July 14, 1976, the Participants' Agreements were executed by 88 public utilities in six states in the Northwest, including the five Cities. A sample Participants' Agreement is attached to the petition of Petitioners Asson, et al. The Participants' Agreements for each city are substantially identical, varying only with reference to the particular participant's name and share of project capability.

34. The Cities signed Participants' Agreements in good faith to meet the power shortages projected by the BPA and others in the Pacific Northwest.

35. The participants in the Supply System Projects 4 and 5 include 24 public utility districts, 21 municipal corporations and 43 electrical cooperatives. The Supply System owns 100% of Project 4 and 90% of Project 5. Ten percent of Project 5 is owned by Pacific Power and Light, a private utility in the State of Washington. Private owners are also involved in Projects 1, 2 and 3. With regard to Project 4 and all the other co-owned projects, owners' liability for the projects' costs are not joint and several: the liability of each owner is limited to its proportionate costs, and the investment of each owner is limited to an amount proportionate to its ownership share.

36. A table showing the "participants' shares" of "project capability" of Projects 4 and 5 is attached as Exhibit E to the Asson petition and Exhibit D to the Bohle petition.

37. The city of Heyburn concluded prior to executing its Agreements that:

(a) It considered itself lawfully empowered by the State of Idaho to purchase electrical power and to provide for its distribution and to sell excess energy.

(b) The city had for many years oeprated its own electric power transmission and distribution systems and during such years had paid as a normal, ordinary and necessary expense of the city the costs and expenses incurred in the acquisition and distribution of the power.

(c) The payment of such costs and expenses had been necessary in order for the city to acquire and distribute the power in order to continue in its function as a public utility.

(d) The electrical energy shortage then existing in the Northwest and projected into the future (at that time) required that the city, in the reasonable exercise of its continued governmental functions, make necessary arrangements to secure to the city a guaranteed supply of electrical power at the most economical rate available.

(e) The options then available to the city through the authorization and execution of the option and services agreement would not exist at a future date.

(f) The acquisition and distribution of electrical power by the city is an ordinary and necessary expense of the city.

(g) That WPPSS is a municipal corporation of the State of Washington and not a private individual, association or corporation.

(h) That by entering into the contracts with WPPSS, the city would thus not be lending its credit in violation of the Idaho Constitution or any cases interpreting the same issued at that time by the Idaho Supreme Court.

38. The Supply System and Chemical Bank have taken the position, which has been held to be correct by a summary judgment order of Judg Coleman of King County, Washington Superior Court, that the Participants' Agreements, Section 6(d), and the Bond Resolution require each participant unconditionally to pay to the Supply System its share of the total annual costs of Projects 4 and 5 including debt service on the bonds issued by the Supply System whether the Projects are operable or operating and notwithstanding the termination of Projects prior to completion. The Cities, for the purpose of these consolidated cases only, accept the position of the Supply System and Chemical Bank as the standard against which this Court should determine whether the Cities had authority to execute the Participants' Agreement.

39. At the time that each city entered into its Participants' Agreement and passed its resolution authorizing execution, its representatives had examined a draft of the Bond Resolution under which 15 separate series of bonds were eventually sold during the period 1977-1981. The Bond Resolution was on file with each city and referred to in each city's authorizing resolution.

40. After execution of the Participants' Agreements, the Supply System issued and sold approximately 2.20 billion dollars in revenue bonds, at varying rates of interest, to finance Nuclear Projects 4 and 5. The date and amounts of the issues are as follows:

Title	Date of Issuance	Dollar Amount
1977A	3-1-77	145,000,000
1977B	6-1-77	90,000,000
1977C	9-1-77	130,000,000
1978A	2-1-78	150,000,000
1978B	6-1-78	150,000,000
1978C	10-1-78	170,000,000
1979A	2-1-79	175,000,000
1979B	9-1-79	150,000,000
1979C	12-1-79	200,000,000
1980A	5-1-80	130,000,000
1980B	7-1-80	180,000,000
1980C	10-1-80	180,000,000
1980D	12-1-80	150,000,000
1981A	3-1-81	170,000,000
1981B	3-1-81	30,000,000

41. Each City's share of the principal amount of the bonds sold, excluding interest and termination costs, is approximately:

Burley	$ 4,180,000
Heyburn	$ 5,654,000
Idaho Falls	$20,130,000
Rupert	$ 7,128,000
Bonners Ferry	$ 4,180,000

None of the Cities conducted an election by the qualified electors to approve execution of the Participants' Agreements, nor did the Cities make provisions for an annual tax to pay the interest or create a sinking fund for payment of the principal amount of the obligation represented by its participants' Agreements.

The respective liability of the Cities under the Participants' Agreements as interpreted for the purpose of this case (paragraph 38 of this Stipulation) exceeded the annual budget of each city adopted under Idaho Code § 50-1002 for 1976.

42. Prior to each bond issuance, the Official Statement for the series of bonds was submitted to the Participants' Committee, a Committee formed under Section 15 of the Participants' Agreement and on which all 88 participants had representation. The first Participants' Committee was elected in August, 1976.

43. The Participants' Committee approved each of the 15 bond issuances. None of the Cities voiced any dissent, during the period 1977-1981, to the borrowing of money for the construction of Projects 4 and 5, although at any time if any of the participants believed that construction budgets were excessive, or that a bond sale was not appropriate, or that a contract award was not appropriate, such proposal of the Supply System could be disapproved by Committee members representing twenty percent or more of the Participants' shares. The Idaho Cities had a combined total Participant's share of less than 2% (.01913).

44. Each of the official statements contain provisions and representations similar to those contained in Exhibit C attached hereto.

45. At the time that they executed their Participants' Agreements for Projects 4 and 5, the Cities desired and requested greater shares of project capability than they were given, as shown in the chart below:

City	Share Requested	Share Given
Burley	.00204	.00190
Heyburn	.00276	.00257
Rupert	.00348	.00324
Bonners Ferry	.00204	.00190
Idaho Falls	.01114	.00915

46. As late as July 23, 1981 the Participants' Committee for Projects 4 and 5, in which the Cities are represented, unanimously passed a resolution of support for Projects 4 and 5. Attached is the resolution, as Exhibit D.

47. On or about January 22, 1982, the Board of Directors and Executive Board of the Supply System adopted resolutions of termination with regard to Projects 4 and 5. At that time Project 4 was approximately 20% complete and Project 5 was approximately 16% complete. Copies of the Notice of Termination and Resolution are attached as Exhibit F to the Asson Petition and Exhibit E to the Bohle Petition.

48. The rates established for electrical service by the Cities are not subject to regulation by the Idaho Public Utilities Commission.

49. Burley raised its electrical rates on November 1, 1982 by Ordinance to create a contingency fund to meet the demands of the Supply System under the Participants' Agreement if the City is adjudicated liable therefor under the Participants' Agreement. A portion of its billings are used to fund the contingency fund.

50. Heyburn raised its electrical rates in November, 1981 and October, 1982 by Ordinance to create a contingency fund to meet the demands of the Supply System under the Participants' Ageement if the City is adjudicated liable therefor under the Participants' Agreement. A portion of its billings are used to fund the contingency fund.

51. Rupert raised its electrical rates on January 1, 1982 and on October 1, 1982 by Ordinance to create a contingency fund to meet the demands of the Supply System under the Participants' Agreement if the city is adjudicated liable therefor under the Participants' Agreement. A portion of its billings are used to fund the contingency fund.

52. The current electrical rates of the Cities with and without charges for Projects 4 and 5 are approximately as set forth

below. This table does not contain the demand charges for commercial and industrial use, which may or may not greatly affect the actual rates of the commercial and industrial users.

Residential Cost Per Kilowatt Hour

	Without 4/5 Charge		With 4/5 Charge	
Heyburn	1st 1500 hrs: Over 1500 hrs:	$.02849 .02294	1st 1500 kwh: Over 1500 kwh:	$.0385 .031
Burley	All kwh:	$.0335	All kwh:	$.0385
Bonners Ferry	All kwh:	$.0290	[none—has not raised rates]	
Idaho Falls	[information not available at time of Stipulation]		[none—has not raised rates]	
Rupert (without multiple residences)	1st 50 kwh Next 450 kwh Next 4500 kwh All above	$.1400 .031 .0215 .0285	$.1800 .04 .028 .0370	

Commercial Cost Per Killowatt Hour

	Without 4/5 Charge		With 4/5 Charge	
Heyburn	1st 15,000 kwh: Over 15,000 kwh:	.02701 .0222	1st 15,000 kwh: Over 15,000 kwh:	$.0365 .03
Burley	1st 15,000 kwh Next 50,000 kwh Next 65,000 kwh	.0335 .0250 .0210	.0385 .0290 .0240	
Bonners Ferry	1st 15,000 kwh Next 50,000 kwh All above	.0290 .0265 .0240	[none—has not raised rates]	
Idaho Falls	[information not available at time of Stipulation]		[none—has not raised rates]	
Rupert	1st 100 kwh/per kw Next 10,000 kwh Next 200 kwh/per kw All above	.0360 .0270 .0185 .0125	.0470 .0350 .0240 .0160	

Industrial Cost Per Kilowatt Hour

	Without 4/5 Charge	With 4/5 Charge
Heyburn	.0222	.03
Burley	Rates included in commercial rates.	
Bonners Ferry	Rates included in commercial rates.	
Rupert	Rates included in commercial rates.	
Idaho Falls	[information not available at time of Stipulation]	[none—has not raised rates]

The figures given in the above chart have been provided by the Cities and are accepted for purposes of this litigation by the Supply System and Chemical Bank, subject to further verification.

53. Including Project 4 and 5 rate charges, the residential rates of all of the Cities are also less than the residential rates of Idaho Power Company and Utah Power and Light. For residential users, Idaho Power charges $.03983 per kilowatt hour; Utah Power charges $.080754 per kilowatt hour in the summer, $.061718 per kilowatt hour in the winter. The Cities and Petitioners accept these figures from the Supply System and Chemical Bank, subject to further verification.

54. The Supply System has, based upon its Fiscal Year 1983 Annual Budget, billed the Cities for payments claimed by the Supply System pursuant to the Participants' Agreement. it is anticipated that the Supply System will bill for additional payments when the successive Annual Budgets are determined.

55. Without the construction of Projects 1 through 5, the Cities have had sufficient electrical power to meet the needs of their customers.

Captions are included for purposes of organization only and are not indepently stipulated facts.

RESPECTFULLY SUBMITTED this 2nd day of June, 1983.

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APPENDIX B

Respondents and Their Counsel
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APPENDIX C

Article 8, Section 3 of the Idaho Constitution provides:

"Limitations on county and municipal indebtedness.—No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city may own, purchase, construct, extend, or equip, within and without the corporate limits of such city, off street parking facilities, public recreation facilities, and air navigation facilities, and for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two thirds (2/3) of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such facilities as may be prescribed by law, and provided further, that any city or other political subdivision of the state may own, purchase, construct, extend, or equip, within and without the corporate limits of such city or political subdivision, water systems, sewage collection systems, water treatment plants, sewage treatment plants, and may rehabilitate existing electrical generating facilities, and for the purpose of paying the cost thereof, may, without regard to any limitation therein imposed, with the assent of a majority of the qualified electros voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue

derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities, as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all of any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district."

APPENDIX D

Affiliates and Subsidiaries
(Except Wholly-owned Subsidiaries)
of J. R. Simplot Company

Simplot Cattle Co.
Simplot Livestock Co.
Salmon Meadows, Inc.